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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION,**

**- and -**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

☐ Affects PG&E Corporation  
☒ Affects Pacific Gas and Electric  
Company  
☐ Affects both Debtors

*\* All papers shall be filed in the Lead  
Case, No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11  
(Lead Case)  
(Jointly Administered)

**OMNIBUS MOTION PURSUANT TO 11 U.S.C § 365(a),  
FED. R. BANKR. P. 6006, AND B.L.R. 6006-1 TO  
APPROVE THE UTILITY'S ASSUMPTION OF  
MUTUAL ASSISTANCE AGREEMENTS**

**(THE "MUTUAL ASSISTANCE MOTION")**

Hearing Date: July 9, 2019  
Hearing Time: 9:30am (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102  
Judge: Hon. Dennis Montali

Objection Deadline: July 2, 2019, at 4:00 p.m. (Pacific Time)

## NOTICE TO CONTRACT COUNTERPARTIES

The counterparties to each of the Mutual Assistance Agreements to be assumed by Pacific Gas and Electric Company pursuant to this Motion are identified on Exhibit B hereto. If you have received this Motion and you are a counterparty to a Mutual Assistance Agreement with Pacific Gas and Electric Company, please review Exhibit B to determine if this Motion affects your rights thereunder.

PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion (the “**Motion**”), pursuant to section 365(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6006-1 of the Bankruptcy Local Rules for the United States District Court for the Northern District of California (the “**Bankruptcy Local Rules**”), for an order approving the Utility’s assumption of certain contracts and agreements (the “**Mutual Assistance Agreements**”) with the utilities and governmental units identified in Exhibit B hereto (the “**Assisting Parties**”), pursuant to which the Assisting Parties provide the Utility with critical support and assistance to aid in restoring and maintaining electric utility service for the Utility’s 16 million customers during emergency situations.

In support of the Motion, the Debtors submit the Declaration of Steve Coleman (the “**Coleman Declaration**”), filed contemporaneously herewith. A proposed form of order granting the relief requested herein is annexed hereto as Exhibit A (the “**Order**”).

## Table of Contents

|      |  |   |
|------|--|---|
| I.   | JURISDICTION .....   | 1 |
| II.  | BACKGROUND .....   | 1 |
| III. | THE MUTUAL ASSISTANCE AGREEMENTS .....   | 1 |
| IV.  | ASSUMPTION OF THE MUTUAL ASSISTANCE AGREEMENTS IS IN<br>THE BEST INTERESTS OF THE UTILITY, ITS CREDITORS, AND ALL<br>PARTIES IN INTEREST ..... | 4 |
| V.   | REQUIREMENTS OF BANKRUPTCY RULE 6006 .....   | 8 |
| VI.  | NOTICE .....   | 8 |

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

|   |    |
|---|----|
| <i>Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.),</i><br>476 F.3d 665 (9th Cir. 2007) .....                            | 10 |
| <i>In re Am. Suzuki Motor Corp.,</i><br>494 B.R. 466 (Bankr. C.D. Cal. 2013).....   | 10 |
| <i>Bakery, Confectionary &amp; Tobacco Workers Int’l Union v. Kirkpatrick (In re</i><br><i>Kirkpatrick),</i><br>34 B.R. 767 (B.A.P. 9th Cir. 1983)..... | 10 |
| <i>In re Crummie,</i><br>194 B.R. 230 (Bankr. N.D. Cal. 1996) .....   | 12 |
| <i>Durkin v. Benedor Corp. (In re G.I. Indus., Inc.),</i><br>204 F.3d 1276 (9th Cir., 2000) .....   | 10 |
| <i>In re Heitman,</i><br>No. 99-20559, 1999 WL 33486720 (Bankr. D. Idaho July 22, 1999) .....   | 12 |
| <i>In re MF Glob. Holdings Ltd.,</i><br>466 B.R. 239 (Bankr. S.D.N.Y. 2012).....  | 10 |
| <i>In re Miller,</i><br>No. 15-61159-12, 2016 WL 1316763 (Bankr. D. Mont. Apr. 1, 2016).....  | 10 |
| <i>NLRB v Bildisco &amp; Bildisco,</i><br>465 U.S. 513 (1984).....  | 9  |
| <i>Pac. Shores Dev. v. At Home Corp. (In re At Home Corp.),</i><br>292 B.R. 195 (N.D. Cal. 2003), <i>aff’d</i> , 392 F.3d 1064 (9th Cir. 2004).....     | 10 |
| <i>Zurich Am. Ins. Co. v. Int’l Fibercom, Inc. (In re Int’l Fibercom, Inc.),</i><br>503 F.3d 933 (9th Cir. 2007) .....                                  | 9  |

**Statutes**

|                                   |       |
|-----------------------------------|-------|
| 11 U.S.C. § 365(a) .....          | 9, 10 |
| 11 U.S.C. § 365(b) .....          | 12    |
| 11 U.S.C §§ 1107(a) and 1108..... | 6     |
| 28 U.S.C. § 1334.....             | 6     |

|    |   |    |
|----|---|----|
| 1  | 28 U.S.C. § 157.....  | 6  |
| 2  | 28 U.S.C. §§ 1408 and 1409 .....  | 6  |
| 3  | <b>Other Authorities</b>  |    |
| 4  | B.L.R. 5011-1(a).....   | 6  |
| 5  | Fed. R. Bank. P. 1015(b).....   | 6  |
| 6  | Fed. R. Bank. P. 2002 .....   | 13 |
| 7  | Fed. R. Bank. P. 6004 .....   | 13 |
| 8  | Fed. R. Bank. P. 6006(e).....   | 13 |
| 9  | <i>Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General</i> |    |
| 10 | Order 24 (N.D. Cal) .....   | 6  |
| 11 |   |    |
| 12 |   |    |
| 13 |   |    |
| 14 |   |    |
| 15 |   |    |
| 16 |   |    |
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION**

3 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,  
4 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D.  
5 Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b).  
6 Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7  
8 **II. BACKGROUND**

9 On January 29, 2019 (the “**Petition Date**”), the Debtors commenced with the Court  
10 voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their  
11 businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108  
12 of the Bankruptcy Code. No trustee or examiner has been appointed in either of the Chapter 11 Cases.  
13 The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to  
14 Bankruptcy Rule 1015(b).

15 On February 12, 2019, the United States Trustee (the “**U.S. Trustee**”) appointed an  
16 Official Committee of Unsecured Creditors (the “**Creditors Committee**”). On February 15, 2019, the  
17 U.S. Trustee appointed an Official Committee of Tort Claimants (the “**Tort Claimants Committee**”  
18 and, together with the Creditors Committee, the “**Committees**”).

19 Additional information regarding the circumstances leading to the commencement of the  
20 Chapter 11 Cases and information regarding the Debtors’ businesses and capital structure is set forth in  
21 the *Amended Declaration of Jason P. Wells in Support of the First Day Motions and Related Relief*  
22 [Docket No. 263] (the “**Wells Declaration**”).

23  
24 **III. THE MUTUAL ASSISTANCE AGREEMENTS**

25 When utility companies, such as the Utility, face natural and man-made disasters and  
26 other emergency situations that cause significant damage to their infrastructure and widespread  
27

1 disruption of service to customers, it is of paramount importance that they respond quickly and safely to  
2 restore service to affected customers. In these emergency situations, utilities often rely on other utilities  
3 from areas of the country not affected by the outage or event in question to provide assistance and  
4 resources to accelerate restoration efforts – this is often referred to as the industry’s mutual assistance  
5 network.

6 Restoring power after a major disruptive event – such as an earthquake, winter storm, or  
7 wildfire – is a complex task that requires significant logistical support and restoration expertise.  
8 Following such an event, the Utility must quickly increase the number of skilled line restoration workers  
9 and have access to the necessary specialized equipment and tools to timely respond and repair damaged  
10 power and gas infrastructure and restore service to customers. To do this, the Utility turns to the mutual  
11 assistance network. Absent support from the network of companion utilities and governmental units that  
12 participate in the mutual assistance network, it would be extremely difficult, if not impossible, for the  
13 Utility to obtain sufficient trained personnel with years of utility specific experience and the other  
14 resources necessary to promptly respond to these events.

15 Access to the mutual assistance network is particularly important for the Utility due to its  
16 location in the State of California. The size, geography, and climate of California means that the Utility  
17 faces extreme weather conditions and earthquake risks, and can face disruptive events arising from these  
18 conditions at any point during the calendar year and throughout its service territory. While the threat of  
19 emergency situations exists year-round, the Utility faces particularly acute and critical threats during the  
20 summer wildfire season.

21 These voluntary assistance arrangements are formalized in agreements, including the  
22 Mutual Assistance Agreements, which are generally managed by regional mutual assistance groups  
23 throughout the United States. The Mutual Assistance Agreements provide a framework for utilities to  
24 request assistance from other utilities in emergency situations, and, if such assistance is provided, for the  
25 requesting utility to reimburse the assisting utilities for the costs and expenses of providing such  
26 assistance. The Mutual Assistance Agreements do not obligate a utility to provide assistance in  
27 emergencies; however, if assistance is provided, the requesting utility is obligated to reimburse the  
28

1 assisting utility under the terms of the agreements.

2 The Utility is seeking to assume<sup>1</sup> the following Mutual Assistance Agreements<sup>2</sup> with a  
3 total of 235 Assisting Parties (some being party to more than one agreement):

- 4 1. The Mutual Assistance Agreement (Electric and Natural Gas) among Members of  
5 the California Utilities Emergency Association (the “**CUEA Agreement**”),  
6 executed by the Utility on July 16, 2008;
- 7 2. The Western Region Mutual Assistance Agreement for Electric and Natural Gas  
8 Utilities (the “**WR Agreement**”), executed by the Utility on June 7, 2006;
- 9 3. The Edison Electric Institute Mutual Assistance Agreement, (the “**Master**  
10 **Agreement**”) executed by the Utility on November 13, 2012;
- 11 4. The Reciprocal Assistance Agreement, dated September 9, 2014, between the  
12 Utility and Florida Power & Light Company (the “**FPL Agreement**”);
- 13 5. The American Gas Association Master Operations Assistance Agreement (the  
14 “**AGA Agreement**”) executed by the Utility on December 13, 2016; and
- 15 6. The Mutual Assistance Agreement, dated January 5, 1994 between the Utility and  
16 Trinity County Public Utilities District (the “**TCPUD Agreement**”).

17 The primary terms of each Mutual Assistance Agreement are substantially similar with  
18 each agreement providing for: (i) the method for a utility to request assistance; (ii) the requesting party’s  
19 obligations to reimburse the assisting party’s reasonable costs and expenses; (iii) the requesting party’s  
20 obligations to provide facilities and supplies to assisting utility personnel; and (iv) the terms and  
21 conditions on which assistance is provided, including employment terms, supervisory responsibility,  
22 and other operational procedures. The Mutual Assistance Agreements generally extend in perpetuity  
23 with no defined end date,<sup>3</sup> and generally permit a party to withdraw from the agreement at will, subject  
24 to certain notice requirements.<sup>4</sup>

25 <sup>1</sup> The Utility may be party to additional agreements related to mutual assistance or containing  
26 provisions regarding mutual assistance which they are not seeking to assume at this time, but reserve  
27 the right to do so at a later date.

28 <sup>2</sup> Copies of the Mutual Assistance Agreements will be provided to counsel for the Committees and the  
U.S. Trustee, and may be made available to other parties in interest upon request.

<sup>3</sup> The AGA Agreement is effective until December 31, 2020.

<sup>4</sup> The FPL Agreement does not include a specific procedure for termination.



The support provided through these Mutual Assistance Agreements is an essential part of the Utility's restoration and response efforts in emergency outage situations as well as its contingency planning efforts. In recent years, the Utility has had a greater need to call on support from Assisting Parties under these agreements. In 2017, the Utility requested and received assistance from 552 full-time equivalent utility workers from approximately 18 Assisting Parties for three major emergency incidents. In 2018, the Utility requested and received assistance from 464 full-time equivalent utility workers from 24 Assisting Parties for two major emergency incidents. The Utility has already sought support from Assisting Parties in response to snow storms causing outages in February 2019.

Currently, the Utility has outstanding financial obligations to the various Assisting Parties under the Mutual Assistance Agreements relating to emergency situations that occurred prior to the Petition Date, including assistance in responding to the Camp Fire, the Carr Fire and the Mendocino Complex Fire. As of the Petition Date, based on a review of its books and records, the Utility owes approximately \$28.5 million to twenty-four Assisting Parties for assistance provided prior to the Petition Date (the "**Outstanding MAA Obligations**"). The Outstanding MAA Obligations owed to each Assisting Party, which must be satisfied or cured for the Utility to assume the applicable Mutual Assistance Agreement, are identified in **Exhibit B** hereto.

**IV. ASSUMPTION OF THE MUTUAL ASSISTANCE AGREEMENTS IS IN THE BEST INTERESTS OF THE UTILITY, ITS CREDITORS, AND ALL PARTIES IN INTEREST**

The Utility's assumption of the Mutual Assistance Agreements should be approved under section 365(a) of the Bankruptcy Code. Section 365(a) provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract . . . of the debtor." 11 U.S.C. § 365(a).

The Supreme Court has defined "executory contracts" as contracts "on which performance is due to some extent on both sides." *NLRB v Bildisco & Bildisco*, 465 U.S. 513, 522 n.6 (1984). The Ninth Circuit has described executory contracts in similar terms, being contracts where "one party's failure to perform its obligation would excuse the other party's performance." *Zurich Am.*

1 *Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007) (citing  
2 *Commercial Union Ins. Co. v. Texscan Corp. (In re Texscan Corp.)*, 976 F.2d 1269, 1272 (9th Cir.,  
3 1992)). The Mutual Assistance Agreements clearly fall within this definition. In each case, there  
4 remains material performance obligations on both the Utility and the Assisting Parties under the Mutual  
5 Assistance Agreements.

6 Bankruptcy Courts generally “approve motions to assume, assume and assign, or reject  
7 executory contracts or unexpired leases upon a showing that the debtor's decision to take such action  
8 will benefit the debtor's estate and is an exercise of sound business judgment.” *In re MF Glob. Holdings*  
9 *Ltd.*, 466 B.R. 239, 242 (Bankr. S.D.N.Y. 2012); *see also Durkin v. Benedor Corp. (In re G.I. Indus.,*  
10 *Inc.)*, 204 F.3d 1276, 1282 (9th Cir., 2000); *In re Miller*, No. 15-61159-12, 2016 WL 1316763, at \*4  
11 (Bankr. D. Mont. Apr. 1, 2016).

12 The “business judgment” standard is not a strict standard; it requires only a showing that  
13 either assumption or rejection of the executory contract will benefit the debtor’s estate. *See Bakery,*  
14 *Confectionary & Tobacco Workers Int'l Union v. Kirkpatrick (In re Kirkpatrick)*, 34 B.R. 767, 769  
15 (B.A.P. 9th Cir. 1983); *Pac. Shores Dev. v. At Home Corp. (In re At Home Corp.)*, 292 B.R. 195, 199  
16 (N.D. Cal. 2003), *aff'd*, 392 F.3d 1064 (9th Cir. 2004) (“Bankruptcy courts generally approve rejection  
17 if the debtor demonstrates that the rejection will benefit the estate under a ‘business judgment’ test.”);  
18 *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 476 (Bankr. C.D. Cal. 2013). Furthermore, “[c]ourts  
19 generally will not second-guess a debtor's business judgment concerning whether the assumption or  
20 rejection of an executory contract or unexpired lease would benefit the debtor's estate.” *In re MF Glob.*  
21 *Holdings Ltd.*, 466 B.R. at 242; *In re Miller*, 2016 WL 1316763, at \*4 (“Although the business judgment  
22 is the proper standard for determining whether to permit assumption or rejection of an executory contract  
23 or unexpired lease, the court should focus on the business judgment of the trustee or debtor in possession,  
24 not on its own business judgment.”). The Court should “presume that the debtor-in-possession acted  
25 prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the  
26 best interests of the bankruptcy estate.” *Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley*  
27 *Med. Grp., Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (in the context of a motion to reject under section  
28

1 365(a)). Only a decision which is “so manifestly unreasonable that it could not be based on sound  
2 business judgment, but only on bad faith, or whim or caprice” falls foul of the rule. *Id.*

3           The Utility seeks to assume the Mutual Assistance Agreements to ensure that it has  
4 adequate resources and support in the event of future outages or other emergency circumstances. As set  
5 forth in the Coleman Declaration, the support of the Assisting Parties is critical for the fast, safe, and  
6 efficient restoration of service during major outages and for the Utility’s contingency planning purposes.  
7 As stated, due to the size, geography, and climate of California, the Utility faces extreme weather  
8 conditions and earthquake risks that can result in events requiring mutual assistance at any point during  
9 the year and throughout its service territory; however, that risk is especially acute and critical during the  
10 summer wildfire season. Accordingly, assumption of the Mutual Assistance Agreements at this time,  
11 prior to the start of the wildfire season, is necessary and appropriate to safeguard the continued and  
12 ongoing delivery of electricity and natural gas to the Utility’s 16 million customers. Furthermore, the  
13 Mutual Assistance Agreements are unique among the Utility’s portfolio of executory contracts in that  
14 they are agreements with other utilities and governmental units within the mutual assistance network to  
15 respond to emergency situations and only require the Utility to reimburse costs and expenses unlike other  
16 contracts that presumably include fees, profits, and margins.

17           Absent assumption of the Mutual Assistance Agreements, the Utility’s ability to safely  
18 and efficiently mitigate hazards caused by damage to power plants, transmission lines, and substations,  
19 including addressing down power lines, will be significantly delayed. Moreover, the Utility’s ability to  
20 promptly restore power to other critical services (such as hospitals, police and fire stations, and other  
21 essential utilities including water and communications systems) may also be delayed or compromised,  
22 which in turn may delay the ability of those services to respond to or be utilized in emergency situations.

23           As set forth in the Coleman Declaration, absent payment of the Outstanding MAA  
24 Obligations and confirmation that any future obligations incurred by the Utility pursuant to the Mutual  
25 Assistance Agreements will be afforded priority as administrative expenses in the Chapter 11 Cases, the  
26 Utility will face difficulty in obtaining the critical and necessary assistance of other utilities during future  
27 outages and emergency situations as Assisting Entities may decline to provide support. If the Utility  
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1 cannot rely on the Assisting Parties in future emergencies, the Utility's ability to promptly respond to  
2 emergency situations and natural disasters will be materially compromised, resulting in a serious risk to  
3 public safety. This could lead to a situation where the Utility may be forced to invest valuable time and  
4 capital in additional resources that would sit idle during normal business operations to ensure it can  
5 adequately respond to emergency situations. Assumption of the Mutual Assistance Agreements would  
6 avoid these costs and expenses and ensure that the Utility has access to the necessary manpower and  
7 equipment to respond to emergency situations, as and when needed.

8 As set forth in the Coleman Declaration, the Utility has observed that the number of  
9 Assisting Parties which have responded to requests for mutual assistance following the commencement  
10 of the Chapter 11 Cases has been lower than the Utility would expect based on previous requests.  
11 Accordingly, the Utility seeks to assume the Mutual Assistance Agreements to ensure that it can  
12 promptly respond to major emergencies and natural disasters. These matters are important to the  
13 continued ability of the Utility to operate its business in a safe and reliable manner and to the success of  
14 these Chapter 11 Cases. There can be no reasonable argument that the decision is not based on sound  
15 business judgment. Accordingly, the relief requested herein should be approved as a sound exercise of  
16 the Utility's business judgment.

17 When assuming an executory contract, section 365(b) of the Bankruptcy Code requires  
18 the debtor to cure any defaults under the contract or provide adequate assurance that it will promptly  
19 cure these defaults. *See* 11 U.S.C. § 365(b)(1)(A); see also *In re Crummie*, 194 B.R. 230, 237 (Bankr.  
20 N.D. Cal. 1996); *In re Heitman*, No. 99-20559, 1999 WL 33486720, at \*1 (Bankr. D. Idaho July 22,  
21 1999) ("Additionally, § 365(a) and (b) require Court approval of assumption, and only then upon proof  
22 of satisfaction of certain prerequisites regarding cure of defaults and adequate assurance of future  
23 performance."). The only defaults under the Mutual Assistance Agreements by the Utility is non-  
24 payment of the Outstanding MAA Obligations. The Utility has funds available to pay the Outstanding  
25 MAA Obligations and will pay them promptly following the approval of this Motion in the amounts set  
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1 forth in Exhibit B.<sup>5</sup>

2  
3 **V. REQUIREMENTS OF BANKRUPTCY RULE 6006**

4 The Utility requests authorization pursuant to Bankruptcy Rule 6006(e) to file this Motion  
5 as an omnibus motion to assume the Mutual Assistance Agreements. As outlined above, (i) the Mutual  
6 Assistance Agreements are all related to the Utility's requests for, and provision of, mutual assistance in  
7 emergencies, and (ii) the Mutual Assistance Agreements all contain similar terms. Accordingly, the  
8 Utility believes there is ample cause for an order permitting this Motion to be heard as an omnibus  
9 motion to avoid the Utility's estate bearing the cost of six, near-identical motions to assume each Mutual  
10 Assistance Agreement. There is no detriment to any party in interest in having the Motion heard as an  
11 omnibus motion.

12  
13 **VI. NOTICE**

14 Notice of this Motion will be provided to (i) the Office of the United States Trustee for  
15 Region 17 (Attn: Andrew Vara, Esq. and Timothy Laffredi, Esq.); (ii) counsel to the Creditors  
16 Committee; (iii) counsel to the Tort Claimants Committee; (iv) the Securities and Exchange  
17 Commission; (v) the Internal Revenue Service; (vi) the Office of the California Attorney General; (vii)  
18 the California Public Utilities Commission; (viii) the Nuclear Regulatory Commission; (ix) the Federal  
19 Energy Regulatory Commission; (x) the Office of the United States Attorney for the Northern District  
20 of California; (xi) counsel for the agent under the Debtors' debtor in possession financing facility; (xii)  
21 each of the Assisting Parties; and (xiii) those persons who have formally appeared in these Chapter 11  
22 Cases and requested service pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that  
23 no further notice is required.

24  
25  
26 <sup>5</sup> \$27,377.31 of the Outstanding MAA Obligations owed to Florida Power & Light Company ("FPL")  
27 by the Utility (out of a total of \$7,431,964) is subject to ongoing review and reconciliation by the  
28 Utility (the "**Disputed Amounts**"). In the event the Utility determines it is not liable for part or all of  
the Disputed Amounts under the FPL Agreement, it will not pay such amounts to FPL.

1 No previous request for the relief sought herein has been made by the Debtors to this or  
2 any other Court.

3 WHEREFORE the Debtors respectfully request entry of an order granting (i) the relief  
4 requested herein as a sound exercise of the Utility's business judgment and in the best interests of its  
5 estate, creditors, shareholders, and all other parties in interest, and (ii) such other and further relief as the  
6 Court may deem just and appropriate.

7  
8  
9 Dated: June 18, 2019

**WEIL, GOTSHAL & MANGES LLP**

**KELLER & BENVENUTTI LLP**

10  
11  
12 By: /s/ Stephen Karotkin  
Stephen Karotkin

13  
14 *Attorneys for Debtors*  
15 *and Debtors in Possession*  
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